

Caridis, Alyssa

From: Randall Garteiser [rgarteiser@ghiplaw.com]
Sent: Monday, July 21, 2014 8:48 AM
To: Higgins, Christopher J.; Caridis, Alyssa
Cc: nvasquez@findlaycraft.com; Christopher Honea; Kirk Anderson; Peter Brasher; bluespike@ghiplaw.com; Eric Findlay; Walter Lackey; AudibleMagic-BlueSpike
Subject: Re: 6:12-cv-00499-MHS-CMC Blue Spike, LLC v. Texas Instruments, Inc. - Audible Magic's Discovery (SERVICE EMAIL)

Thanks, here is the call-in information:

- Call **(903) 705-7420** or **(888) 908-4400**.
- Push **6** for Conference Room, then **100** for extension 100, then **3841#** for the password.

Due to a calendaring mistake made while a colleague was out on paternity leave, Blue Spike Inc and Scott Moskowitz did not receive discovery served by Audible Magic.

Audible Magic has taken the position that all objections to these responses are now waived and all RFAs are deemed admitted. Given that Scott Moskowitz and Blue Spike Inc. never received the discovery requests to admit or deny the accusations contained therein, the result of Garteiser Honea's failure should not create prejudice to its clients. This is akin to outside counsel of a defendant who inadvertently produces a privileged document. That is dealt with in an amicable way without motion practice, but here Audible Magic disagrees, so now Garteiser Honea must request relief from the Court to allow Mr. Scott Moskowitz and Blue Spike, Inc., an extension to July 25 to respond to these three discovery requests at issue.

If Audible Magic will agree to this brief extension to respond until July 25, then there is no need for us to meet and confer. I had previously requested until August 4, but in a further attempt to avoid motion practice, we will agree to serve responses this week for the problem brought to our attention last week.



Randall Garteiser / Partner
888.908.4400 x104 / rgarteiser@ghiplaw.com
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On Jul 21, 2014, at 9:43 AM, Higgins, Christopher J. <chiggins@orrick.com> wrote:

Randall,

We are available today at 3:30 central for the meet and confer.

-Chris

From: Higgins, Christopher J.
Sent: Friday, July 18, 2014 4:58 PM
To: rgarteiser@ghiplaw.com

Cc: nvasquez@findlaycraft.com; Christopher Honea; Kirk Anderson; Peter Brasher; bluespike@ghiplaw.com; Eric Findlay; Walter Lackey; AudibleMagic-BlueSpike

Subject: Re: 6:12-cv-00499-MHS-CMC Blue Spike, LLC v. Texas Instruments, Inc. - Audible Magic's Discovery (SERVICE EMAIL)

Randall,

We are working with local counsel to find a time on Monday for the meet and confer. Please let us know the specific issues to be addressed in the meet and confer and the nature of the motion that Blue Spike contemplates filing so that we can be prepared to discuss them on the call.

-Chris

From: rgarteiser@ghiplaw.com

Sent: Friday, July 18, 2014 4:25 PM

To: [Christopher Higgins](#)

Cc: nvasquez@findlaycraft.com, [Christopher Honea](#), [Kirk Anderson](#), [Peter Brasher](#), bluespike@ghiplaw.com, [Eric Findlay](#), [Walter Lackey](#), AudibleMagic-BlueSpike@orrick.com

In order to comply with the L.R. CV-7(h) conference requirements, we need local counsel to be on the call. As a compromise to avoid motion practice that publicizes my calendaring mistake, Blue Spike Inc. will not agree to admit RFAs 1-5. Blue Spike Inc., may ultimately admit to these RFAs but it will not be due to my mistake.

I am available today from 4-7 pm Central, or Monday from 9 am - 9 pm Central.

Please advise when lead and local counsel are available promptly meet on this issue.



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On Jul 18, 2014, at 9:27 AM, Higgins, Christopher J. <chiggins@orrick.com> wrote:

Randall,

We have already stated our position that Audible Magic, Corp.'s First Set of Requests for Admission to Counterclaim Defendant Blue Spike, Inc (served on June 11, 2014) have been deemed admitted pursuant to FRCP 36. An email four days after they were due asking for a three week extension does

nothing to change our position. With respect to the Interrogatories, our position remains that all objections have been waived. Blue Spike, Inc. and Scott Moskowitz still owe Audible Magic complete responses to these interrogatories, which we now understand you are claiming will not be forthcoming for three weeks

With respect to your claim of confusion, it is hard to believe how you could be confused with hand-served discovery requests on a completely different subject, to completely different entities, three weeks after the RFAs and Interrogatories at issue below were served. And, as a point of clarification, those discovery requests were hand served on July 2, making August 1 the deadline to respond. We are within our rights to hand serve documents on an opposing party in order to control whether the provisions of Rule 6(d) will apply.

To the extent Blue Spike wishes to meet and confer on these issues, we are available during today's meet and confer scheduled for noon central.

-Chris

From: Randall Garteiser [<mailto:rgarteiser@ghiplaw.com>]
Sent: Thursday, July 17, 2014 3:52 PM
To: Caridis, Alyssa
Cc: Nallely Vasquez; chonea@ghiplaw.com; kanderson@ghiplaw.com; pbrasher@ghiplaw.com; bluespike@ghiplaw.com; Eric Findlay; Walter Lackey; Higgins, Christopher J.; Ramsey, Gabriel M.
Subject: Re: 6:12-cv-00499-MHS-CMC Blue Spike, LLC v. Texas Instruments, Inc. - Audible Magic's Discovery (SERVICE EMAIL)

Dear Counsel:

We appreciate you bringing this oversight to our attention. We are investigating on our end this matter but it appears while my colleague was out of the office on paternity leave we had a mistake occur in our calendaring system. Initially, it appears to have involved confusion then Findlay Craft also hand served some additional discovery requests on July 3, 2014 to our law firm office here in Tyler, Texas. In hindsight, these are different requests than what Ms. Vasquez served, and not merely re-served copies of what she had previously served via email.

So going forward, we ask that both your firms please serve us consistently by email to bluespike@ghiplaw.com. We understand that proper service should be made on Audible Magic by serving AudibleMagic-BlueSpike@orrick.com.

As lead counsel, I take responsibility for the mistake we made, but we request an extension on this discovery until the deadline of the discovery that your client Audible Magic served on July 3, 2014. In other words, we would like an extension to respond to Audible Magic's discovery until August 4, 2014. We request this relief in the spirit of the parties' stipulated protective order with regards to inadvertent mistakes in the production of privileged documents — we are merely trying to avoid a Draconian result based upon an obvious oversight.

Please advise if this is an acceptable resolution to this unfortunate calendaring event. Thanks in advance for your cooperation in handling this inadvertent error.



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On Jul 15, 2014, at 4:41 PM, Caridis, Alyssa <acaridis@orrick.com> wrote:

Counsel,

Blue Spike and Scott Moskowitz's responses to the attached discovery requests were due yesterday. We did not receive any responses. To the extent responses were served by non-electronic means, please e-mail those responses by close of business today. Otherwise, per FRCP 36, Audible Magic's first set of requests for admission are now deemed admitted. Furthermore, any objections that Mr. Moskowitz or Blue Spike Inc. had to the interrogatories are now waived. Please provide substantive responses to these interrogatories by close of business on Thursday July 17.

Regards,
Alyssa Caridis

From: Nallely Vasquez [<mailto:NVasquez@findlaycraft.com>]
Sent: Wednesday, June 11, 2014 2:52 PM
To: 'chonea@ghiplaw.com'; 'rgarteiser@ghiplaw.com'; 'cjohns@jmehlaw.com'; 'kanderson@ghiplaw.com'; 'pbrasher@ghiplaw.com'; 'bluespike@ghiplaw.com'
Cc: Eric Findlay; Walter Lackey; Higgins, Christopher J.; Ramsey, Gabriel M.; Caridis, Alyssa
Subject: 6:12-cv-00499-MHS-CMC Blue Spike, LLC v. Texas Instruments, Inc. - Audible Magic's Discovery (SERVICE EMAIL)

Dear Counsel,

Please see attached the following:

- Audible Magic, Corp.'s First Set of Requests for Admission to Counterclaim Defendant Blue Spike, Inc.;
- Audible Magic, Corp.'s First Set of Interrogatories to Counterclaim Defendant Blue Spike, Inc.; and
- Audible Magic, Corp.'s First Set of Interrogatories to Counterclaim Defendant Scott Moskowitz.

Thank you,

Nallely Vasquez
<image001.jpg>

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